JD–23–21
Davenport, IA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

ENRIGHT SEEDING, INC.

and **CASE 25–CA–210670**

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 150, AFL–CIO

Ashley M. Miller, Esq., for the General Counsel.
Rob Paszta, Esq.*, of Countryside, Illinois,* for the Charging Party.
Jeffrey Wright, Esq., for the Respondent.

BENCH DECISION AND CERTIFICATION

Statement of the Case

KELTNER W. LOCKE, Administrative Law Judge: On February 16, 2021, a hearing in this matter opened before me by videoconference. All parties finished presenting their evidence on that date. Then, I adjourned the hearing until March 24, 2021, when it resumed for oral argument, and then recessed until March 26, 2021.

On that date, I delivered a bench decision pursuant to Section 102.35(a)(10) of the Board's Rules and Regulations, setting forth findings of fact and conclusions of law. In accordance with Section 102.45 of the Rules and Regulations, I certify the accuracy of, and attach hereto as "Appendix A," the portion of the transcript containing this decision,[1] Remedy, conclusions of law, order, and notice provisions are set forth below.

RESPONDENT'S COMPLIANCE WITH SETTLEMENT AGREEMENT

The parties entered into a settlement agreement which was approved on August 13, 2018. The General Counsel alleges that Respondent failed to comply with the terms of this agreement, and set it aside. The Respondent has denied this allegation.

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1 The bench decision appears in uncorrected form at pp. 266 through 282 of the transcript. The final version, after correction of oral and transcriptional errors, and the addition of case citations, is attached as Appendix A to this Certification.

By entering into the settlement, the Respondent promised to provide certain information, described in the bench decision, which the Union had requested in its capacity as bargaining representative.[2] The Union needed this information to calculate how much the Respondent owed in wage and benefit fund payments under certain collective-bargaining agreements.[3]

The Union sought, and the Respondent agreed to provide, information and documents concerning the Respondent's projects over a 24-month time period. Based on Union Organizer Patrick Carlson's uncontradicted testimony, which I credit, I find that the Respondent did not furnish the Union with the requested information for all the projects worked during the 24-month time period. Therefore, I conclude that the Respondent did not fully comply with the settlement agreement. Revoking the settlement agreement was appropriate.

THE UNION'S STATUS

Paragraph 5(d) of the complaint alleges that at all times since July 2, 2007, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Unit. The Respondent denies this allegation.

On July 2, 2007, the Respondent's president, Jamie Enright, signed two Memorandums of Agreement with the Union. Each included the following language:

> 1. The EMPLOYER recognizes the UNION as the sole and exclusive bargaining representative for and on behalf of the employees of the EMPLOIYER within the territorial and occupational jurisdiction of the UNION.

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2 Specifically, the Union sought the following information:

> i) Detailed list of all projects that Enright Seeding, Inc., has been hired or contracted to perform involving work covered by collective bargaining agreements during the past 24 months; and,
>
> ii) Payroll records for all projects listed in response to the item listed above showing employee name, hours worked, and type of work performed by each employee.

3 The Respondent had adopted these agreements by reference by signing a Memorandum of Understanding with the Union in 2007. This Memorandum bound the Respondent not only to the terms of those contracts in effect at that time, but also to agreements negotiated by the Union with a multi–employer association, to replace those contracts when they expired.

I have concluded that lawful "evergreen clause" language continued to bind the Respondent to the terms of successive agreements until it gave the Union notice during a specified time period. Further, I have that the Respondent never gave the required notice. Although the Respondent's owner sincerely believed that he had severed all ties with the Union, that belief was incorrect and he continued to be bound by the terms of the collective-bargaining agreements.

The Union intended to use the requested information to file grievances under the collective-bargaining agreements. Therefore, I have concluded that the Union sought the information to perform its duties as bargaining representative, that the information was relevant to and necessary for that purpose. *International Protective Services, Inc.*, 339 NLRB 701 (2003) ("It is well settled that information related directly to the wages, hours, and other terms and conditions of employment, such as pension and medical benefits, of bargaining unit employees represented by a union is presumptively relevant to the union's role as collective-bargaining representative and must be furnished upon request.") No evidence rebuts that presumption of relevance.

> Prior to recognition, the EMPLOYER was presented and reviewed valid written evidence of the UNION's exclusive designation as bargaining representative by the majority of appropriate bargaining unit employees of EMPLOYER.
>
> 2. The Parties agree that the EMPLOYER is part of a single bargaining unit made up of all employers party to the Master Agreement adopted herein.

In determining whether this document establishes the Union's status as exclusive bargaining representative pursuant Section 9(a) of the Act, I follow the framework established by the Board in *Staunton Fuel & Material, Inc.*, 335 NLRB 717 (2001). That analysis poses three questions, all of which must be answered in the affirmative:

1. Does language unequivocally indicate that the union requested recognition as majority representative?

2. Has the employer recognized the union as majority representative?

3. Was the employer's recognition based on the union's having shown, or having offered to show, an evidentiary basis of its majority support?

The Memorandums of Agreement are on what appear to be standard forms prepared by the Union and tendered to the Respondent's president for signature. By asking him to sign the forms, which stated that the Respondent recognized the Union as the Section 9(a) exclusive bargaining representative, the Union clearly requested such recognition. Therefore, the first prong of the 3-part test is satisfied.

The Memorandums of Agreement which Enright signed clearly state that the Respondent was recognizing the Union as majority representative. Therefore, the second prong of the test also is satisfied.

As to the third requirement, the Memorandums of Agreement state that "Prior to recognition, the EMPLOYER was presented and reviewed valid written evidence of the UNION's exclusive designation as bargaining representative by the majority of appropriate bargaining unit employees of EMPLOYER."

It is appropriate to rely upon the unambiguous language in the documents Enright signed notwithstanding any parol evidence to the contrary. *Quality Building Contractors, Inc.*, 342 NLRB 429, 430 (2004). In doing so, I also note that more than 13 years had elapsed between Enright's signature on the documents and his testimony at the hearing. As an evidentiary matter, the passage of time may sometimes adversely affect human recollection but does not alter the content of a written statement contemporaneous with an event.

Based on the language in the Memorandums of Understanding, I conclude that the third *Staunton Fuel and Material* requirement is satisfied. Because the present facts meet all three of these requirements, I conclude that the Union has been, at all material times, the Section 9(a)

exclusive bargaining representative.

However, it may also bear mention that the Respondent would have a duty to furnish the Union with requested relevant information even if the Union enjoyed only Section 8(f) status. An employer cannot lawfully repudiate a collective-bargaining agreement with a Union it recognized pursuant to Section 8(f) during the term of that contract. See *John Deklewa & Sons*, 282 NLRB 1375 (1987), enfd. sub nom. *Iron Workers, Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988), cert. denied 488 U.S. 889 (1988).

Because the Respondent did not give notice of termination as required by the "evergreen clause," it automatically adopted the successor to each expiring agreement. When the Union made its request for information, and at all times thereafter, there were collective-bargaining agreements in effect.[4]

In sum, I conclude that at all material times the Union was the exclusive bargaining representative pursuant to Section 9(a) of the Act, but even if it only had Section 8(f) status, it would be entitled to receive the requested information. Therefore, the Respondent's failure to furnish that information violated Section 8(a)(5) and (1) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, the Respondent must furnish to the Union the requested information, and must post the notice to employees attached hereto as Appendix B.

CONCLUSIONS OF LAW

1. The Respondent, Enright Seeding, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Charging Party, International Union of Operating Engineers, Local 150, AFL–CIO, is a labor organization within the meaning of Section 2(5) of the Act. At all material times, it has been the exclusive bargaining representative, pursuant to Section 9(a) of the Act, of a collective-bargaining unit which includes certain employees of the Respondent.

3. The bargaining unit described in paragraph 2, above, consists of the following employees: "The employees identified in Article 1, Section 1.1 of the collective bargaining agreement between the Associated Contractors of the Quad Cities and the Union (the Quad

4 Enright signed a Memorandum of Agreement adopting by reference the Union's collective-bargaining agreement applicable to heavy and highway construction, and a Memorandum of Agreement adopting by reference the Union's collective-bargaining agreement applicable to building construction. Because the Respondent did not give the required notice upon the expiration of either agreement, Respondent automatically became bound by the successor to each agreement. Thus, at any particular time, two collective-bargaining agreements binding on Enright were in effect.

Cities Heavy & Highway Agreement) effective June 1, 2017, through May 31, 2020." It is an appropriate unit for collective bargaining within the meaning of Section 9(b) of the Act.

4. The Respondent violated Section 8(a)(1) and Section 8(a)(5) of the Act by failing to furnish the Charging Party with information it requested, described more fully in the complaint and in this decision, which was relevant to and necessary for the performance of the Charging Party's duties as exclusive bargaining representative

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

6. The Respondent did not engage in any unfair labor practices alleged in the complaint not specifically found herein.

On the findings of fact and conclusions of law herein, and on the entire record in this case, I issue the following recommended[5]

ORDER[6]

The Respondent, Enright Seeding, Inc., its officers, agents, successors, and assigns, shall

1. Cease and desist from:

(a) Failing and refusing to furnish the Charging Party with requested information relevant to and necessary for the performance of its responsibilities as the exclusive collective-bargaining representative.

(b) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Charging Party, without delay, the information it has requested since August 9, 2017, as described in footnote 2, above.

(b) Within 14 days after service by the Region, post at its facilities in the

5 If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, these findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board, and all objections to them shall be deemed waived for all purposes.

6 If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

Davenport, Iowa, area, copies of the attached notice marked "Appendix B."[7] Copies of the notice, on forms provided by the Regional Director for Region 25, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 9, 2017. *Excel Container, Inc.*, 325 NLRB 17 (1997).

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. May 10, 2021

Keltner W. Locke
Administrative Law Judge

7 If this Order is enforced by a judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX A

Bench Decision

This decision is issued pursuant to Section 102.35(a)(10) and Section 102.45 of the Board's Rules and Regulations. Based on Board precedent and my findings herein, I find that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to furnish the Union with requested relevant information.

Procedural History

This case began on November 29, 2017, when the Charging Party, the International Union of Operating Engineers, Local 150, AFL–CIO, filed the charge in this proceeding. For brevity, I will refer to the Charging Party as the Union.

On April 30, 2018, the Regional Director for Region 25 of the National Labor Relations Board issued a complaint and notice of hearing.

Before any hearing opened, the parties entered into an informal settlement agreement, which the Regional Director approved on August 13, 2018. This agreement stated, in part: "By approving this Agreement the Regional Director withdraws any Complaint(s) and Notice(s) of Hearing previously issued in the above case(s), and the Charged Party withdraws any answer(s) filed in response."

On October 22, 2020, the Regional Director issued an "Order Revoking Settlement and Complaint and Notice of Hearing." The Respondent filed a timely answer.

On February 16, 2021, a hearing opened before me by videoconference. The parties completed the presentation of evidence on that date, and I adjourned the hearing until March 24, 2021, when it resumed for oral argument. I then adjourned the hearing until today, March 26, 2021, when it resumed for delivery of this bench decision.

Admitted Allegations

In its answer, the Respondent admitted the allegations raised in complaint paragraphs 1, 2(a), 2(c), 2(d), 3, 4, 6(a), and 9. It also admitted some allegations raised in complaint paragraph 2(b). Based on those admissions, I make the following findings.

At all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the National Labor Relations Act, which for brevity I will refer to as the Act. Assertion of jurisdiction is appropriate under the Board's standards.

Additionally, at all material times, Jamie Enright held the position of Respondent's

President and has been a supervisor of Respondent within the meaning of Section 2(11) of the Act and an agent of Respondent within the meaning of Section 2(13) of the Act.

At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

Also, I find that, since about August 9, 2017, the Union has requested in writing that Respondent furnish the Union with the following information for employees covered by the Quad Cities Heavy & Highway Agreement:

i) Detailed list of all projects that Enright Seeding, Inc., has been hired or contracted to perform involving work covered by collective bargaining agreements during the past 24 months; and,

ii) Payroll records for all projects listed in response to the item listed above showing employee name, hours worked, and type of work performed by each employee.

Further, I find that the Respondent and the Union entered into a settlement agreement in this case, which the Regional Director approved on August 13, 2018. The Regional Director set aside this settlement agreement on October 22, 2020, and alleges that the Respondent violated the terms of that agreement. However, the Respondent denies this allegation.

Facts

Based on my observations of the witnesses, I conclude that Jamie Enright's testimony is reliable. To the extent that there are conflicts between his testimony and that of other witnesses, I credit Enright.

On July 2, 2007, Enright signed a sheaf of documents without reading them carefully. But even if he had parsed them meticulously, he might well have not understood the importance of one seemingly harmless paragraph in one of them. In fact, a decade would go by before the consequences of that paragraph became apparent.

Enright owns a small company in Iowa. Larger contractors hire him to do a specialized task, planting seed to control erosion.

In 2007, Enright had the chance to perform this service for a general contractor, McCarthy Improvement, on a highway project at Rapid City, Iowa. The Union represented the workers who operated equipment on this project. The Union offers membership to owner-operators as well as to those employed by companies, and Enright decided to pay the fees necessary to obtain a Union card on that basis.

At the Union offices, Enright signed a number of different forms. Many pertained to him as an individual, an "owner-operator." But by signing two of them, he bound his company, Enright Seeding, the Respondent in this proceeding. Each of these two was titled

"Memorandum of Agreement" and each had similar terms.

Each "Memorandum of Agreement" (MOA) included a paragraph which adopted by reference a collective-bargaining agreement which the Union had executed with a contractor's association. One MOA adopted a collective-bargaining agreement covering heavy and highway construction and the other adopted a contract covering building construction. Here, I will quote the paragraph in the MOA adopting the Heavy and Highway Agreement. This paragraph stated:

> 3. The Parties do hereby adopt the Master Agreement dated June 1, 2006 entered into by and between the UNION and the Associated Contractors of the Quad Cities (Heavy & Highway Agreement) and the parties do hereby mutually agree to be bound by the terms and conditions of that Master Agreement and the Agreement of the Declaration of Trust of the Midwest Operating Engineers Pension Plan, Midwest Operating Engineers Welfare Plan, Local 150 I.U.O.E. Vacation Savings Plan and the Local 150 Apprenticeship Fund, and all amendments heretofore or hereafter made thereto, as though the same were fully incorporated herein. The Employer acknowledges that he has received a copy of the aforesaid Master Agreement, that he has reviewed same and that he is aware of the obligations arising thereunder.

The corresponding paragraph in the other MOA is similar. The Union waived for 2 years Enright's obligation to make payments to the benefit funds. The record establishes that he did not make such payments at any time.

Although the Memorandums of Agreement stated that the Employer acknowledged receipt of the Master Agreement, I find, based on Enright's credited testimony and the entire record, that he had not received a copy of either collective-bargaining agreement.

Each MOA also included a provision that it would continue in effect from year to year and would adopt any new Master Agreement between the Union and the multi-employer association, "unless notice of termination or amendment is given in the manner provided herein." To terminate the MOA, either the Union or Enright had to give the other notice of termination at least 3 months before the Master Agreement between the multi-employer association and the Union expired.

The record does not establish that Enright ever provided notice of termination in the manner specified in the Memorandums of Agreement. I find that he did not.

However, it should also be observed that neither MOA stated the date on which the collective-bargaining agreement it adopted by reference expired. The record also does not establish that the Union ever told Enright these dates.

The two Memorandums of Agreement also brought any of Respondent's employees who operated construction equipment into the multi-employer bargaining unit. The record does not reflect whether Respondent had any such employees at the time Enright signed these

Agreements in 2007. At the time of the hearing, the Respondent had one such employee.

Each Memorandum of Agreement stated that prior to recognition of the Union as exclusive bargaining representative of such employees, "the EMPLOYER was presented and reviewed valid written evidence of the UNION's exclusive designation as bargaining representative by the majority of appropriate bargaining unit employees of EMPLOYER." However, the record does not establish that to be the case and I find that Enright never received any such evidence.

Four years after signing the MOAs, Enright decided to drop out of the Union. His dues had more than doubled.

In the summer of 2011, Enright's wife, who was working at the company as a secretary, contacted the Union to find out what he should do to end his relationship with it. Enright and his wife then filled out the necessary paperwork and submitted it.

The Union returned the paperwork the Enrights had submitted They made some changes and sent it back. The Union issued a withdrawal card signifying that Enright no longer was a member. Enright believed that he had totally severed his relationship with the Union.

Five years went by. Then, one day in August 2016, while Enright was working at a jobsite, a Union representative walked up and introduced himself. The representative, Shannon Vickers, identified himself and told Enright that the Union "had an issue" with the job because Enright was not employing any "Operators." By "Operators," Vickers was referring to Union members.

Enright explained that he had withdrawn from the Union. Vickers replied that Enright's company remained a signatory to the agreements. Vickers told Enright to contact another Union representative, Ryan Drew.

Enright did not contact Drew. Vickers filed a grievance against Enright Seeding. The grievance alleged that Enright violated the collective-bargaining agreement by failing to hire an Operator for work covered by the agreement.

On September 2, 2016, the same date as the grievance, the Union's president sent Enright a letter notifying him of the grievance and stating that he should attend a meeting with the Union's treasurer on September 21, 2016. It further stated:

> Alternatively, you may mail your settlement check to the attention of Marshall Douglas at the Rock Island address below prior to the date of hearing in the full amount of $1,250.72 payable to IUOE Local 150 Assistance Fund.
>
> It is in the best interest of your company to negotiate a settlement at the pre-grievance hearing. Many grievances are resolved at this meeting. If you do not attend the pre-grievance hearing or mail us your settlement check prior to that

date and this matter remains unresolved, it will be automatically schedule for the next meeting of the Joint Grievance Committee.

Attached to this letter was a statement by Vickers. It said that Vickers spoke with Enright on August 4, 2016. Vickers reported that Enright "said that he took a withdrawal card so he believed that ended his company's agreement. However, taking a withdrawal prohibits him from personally running equipment within the jurisdiction of the agreement and requires him to hire Operators through the Local Dispatch Hall."

Vickers' statement that Enright believed that taking a withdrawal card ended his company's agreement is consistent with other evidence in the record. I conclude that Enright held a sincere belief that when he withdrew from the Union in 2011 he had terminated all obligations to the Union.

Enright did not attend the September 21, 2016 meeting and the Union submitted its grievance to the Joint Grievance Committee. On January 9, 2016, the Committee held that Enright had violated the collective-bargaining agreement and must pay $1250.72 to the Union' Members Assistance Fund.

Thereafter, the Union filed another grievance against Enright, this time for allegedly violating the collective-bargaining agreement while working on another project. The Union notified Enright of the grievance by email on March 7, 2017. The next day, the Union sent a certified letter to Enright stating that the Company should send an officer or representative to meet with the Union's treasurer on March 15, 2016. The letter, however, did not propose a settlement amount.

On August 9, 2017, the Union requested that Enright provide the following information related to employees covered by the Master Highway and Heavy Equipment Agreement:

i) Detailed list of all projects that Enright Seeding, Inc., has been hired or contracted to perform involving work covered by collective bargaining agreements during the past 24 months; and,

ii) Payroll records for all projects listed in response to the item listed above showing employee name, hours worked, and type of work performed by each employee.

The Respondent has not furnished the Union with this information and, in the present complaint, the General Counsel alleges that this failure violates Section 8(a)(5) and (1) of the Act.

Analysis

The Respondent argues that it repudiated its agreements with the Union and did so more than 6 months before the filing of the unfair labor practice charge in this case. That would place the repudiation outside the statute of limitations established in Section 10(b) of the Act. Under

this theory, the lawfulness of the repudiation cannot now be challenged and the repudiation must be deemed valid.

As a general rule, the Act does not allow an employer to recognize a union unless that union is supported by a majority of bargaining unit employees. If an employer receives evidence that a majority of its bargaining unit employees do wish representation by the union, it may recognize the union voluntarily. Or, the union may demonstrate its majority support through a Board-conducted election, resulting in a Board certification of representative.

However, the law makes an exception for employers in the construction industry. These employers perform projects of limited duration at different jobsites and must be able to obtain a skilled crew of workers quickly. So, the law allows such an employer to enter into an agreement with a union even before it hires the employees, and without any demonstration that a majority of them wish to be represented by the Union.[8]

Since this exception appears in Section 8(f) of the Act, such recognition commonly is called 8(f) recognition. Recognition after a majority of bargaining unit employees designate the union is called Section 9(a) recognition.

The evidence here clearly shows that the Respondent entered into an 8(f) relationship with the Union. However, its Memorandums of Agreement state that it acknowledged receiving evidence of majority status. Although that was not in fact the case, this recognition took place so long ago its lawfulness cannot be contested at this late date.

In any event, a collective-bargaining agreement entered into under Section 8(f) cannot be repudiated during the term of the agreement. See *Littlejohn Electrical Solutions, LLC*, 368 NLRB No. 76 at fn. 1. The Agreements were in effect at the time of the purported repudiation, so for that reason, the repudiation was not valid.

Moreover, a Union must be placed on clear and unequivocal notice of a purported repudiation before it can be deemed effective. The record here does not establish that the Respondent ever gave the Union such clear and unequivocal notice.

The Respondent contends that all the circumstances did indeed place the Union on notice. These circumstances include the Respondent's failure ever to make payments into the Union's benefit funds or use the Union's referral service to obtain employees.

To support its argument, the Respondent cites my decision in a previous, unrelated case, *Gulf Coast Rebar*, 365 NLRB No. 128, slip op. at 12 et seq. (2017). This reliance has one fatal flaw: The Board reversed my decision and held that the respondent in that case violated the Act.

Respondent's argument, in effect, urges that rather than learn from a previous error I

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8 See generally, *Raymond Interior Systems*, 367 NLRB No. 124, slip op. at 3–4 (2019).

should repeat it. Such an adventure I respectfully decline.

Accordingly, I find that the Respondent did not repudiate the collective-bargaining agreements and instead remains a party to them. The Union seeks the requested information to enforce the contract's terms, and therefore I find that it is relevant and necessary. Accordingly, the Respondent had a duty to furnish the requested information and failing to do so violated Section 8(a)(5) and (1) of the Act.

It may be noted that an administrative law judge does not have the flexibility of a chancellor to fashion an equitable remedy, but is constrained like a common law judge by the strictures of the law. Above all, an administrative law judge does his duty by following precedent. Regardless of his personal notions about fairness, the judge must follow the law. Otherwise, it will not offer consistent and equal justice to all.

When the transcript of this proceeding has been prepared, I will issue a Certification which attaches as an appendix the portion of the transcript reporting this bench decision. This Certification also will include provisions relating to the Findings of Fact, Conclusions of Law, Remedy, Order and Notice.~ When that Certification is served upon the parties, the time period for filing an appeal will begin to run.

I appreciate the courtesy and professionalism which all counsel have demonstrated in this proceeding. The hearing is closed.

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT interfere with, restrain, or coerce our employees in the exercise of these rights, guaranteed to them by Section 7 of the National Labor Relations Act.

WE WILL NOT fail and refuse to furnish the Union, International Union of Operating Engineers, Local 150, AFL–CIO, with information it requests which is relevant to and necessary for the performance of its duties as the exclusive bargaining representative.

WE WILL NOT, in any like or related manner, interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL furnish the Union with the information it requested beginning on August 9, 2017.

ENRIGHT SEEDING, INC.
(Employer)

Dated _____ By _____

The National Labor Relations Board is an independent Federal Agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to an agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov

Minton-Capehart Federal Building, 575 N. Pennsylvania Avenue, Room 238 Indianapolis, IN 46204-1577
(317) 226-7381, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/25-CA-210670 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273–1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (317) 226-7413.